IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.467 OF 2005
IN
SUMMONS FOR JUDGEMENT NO.281 OF 2004
IN

SUMMARY SUIT NO.613 OF 2004

Messrs. Shah Industries Pvt. Ltd. Appellant
vs.
Messrs.Saumitra Engineering Pvt. Ltd. Respondent

Mr.Gaurav Joshi i/b. Ms.M.Fulbandhe for the appellant.

Mr.S. Shamin i/b. M/s.Shamin & Co. for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 20th June 2005

P.C.

Heard.

2. Appeal is admitted.

3. The respondent waives service through its advocate.

4. Printing of paper book dispensed with.

5. By consent the appeal is heard finally at this stage.

6. During the course of hearing, the learned counsel appearing for the parties agreed that the appeal may be

disposed of by the following order:

(i) The suit is decreed in favour of the plaintiff (respondent) and against the defendant (appellant) in the sum of Rs.4,00,000/-.

(ii) The defendant (appellant) shall also be liable to pay simple interest at the rate of 8% per annum on the sum of Rs.4,00,000/- from 10th May 2003 until the date of payment.

(iii) The undertaking of Shri Shirish H. Shah on behalf of the defendant (appellant) is recorded and accepted that the aforesaid decretal amount shall be paid by the defendant (appellant) to the plaintiff (respondent) by way of demand draft/pay order/banker's cheque on or before 15th July 2005.

(iv) We also record and accept the undertaking of Shri Shirish H. Shah, on behalf of the defendant that out of the amount payable by the defendant to the plaintiff a sum of Rs.75,000/- shall be paid to the plaintiff within one week from today by way of demand draft/pay

order/bankers cheque.

(v) The judgment and decree passed by the learned trial Judge on 25th January 2005 stands modified in the aforesaid terms.

(vi) In default, it is clarified that the judgment and decree passed by the trial Judge on 25th January 2005 shall come into operation and the plaintiff shall be entitled to execute the decree dated 25th January 2005 passed by the learned trial Judge.

7. No costs.

8. The Court fee paid by the appellant on appeal may be refunded as per law only after the praecipe is filed by the appellant that the payment as per this order has been made by the defendant to the plaintiff.

9. The plaintiff shall also be entitled to the refund of the court fee paid in the suit as per the order passed by the learned trial Judge.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)